

GRANT NO.                     

GRANT BETWEEN  
THE STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
AND  
GRANTEE NAME

GRANTEE/ADDRESS:

Contact Name  
Organization Name  
Address  
City, State, Zip  
(Telephone number)  
(Fax Number)

GRANT ADMINISTRATOR/ADDRESS:

Contact Name  
Organizational Unit  
Department of Licensing and Regulatory Affairs  
Address  
City, State, Zip  
(Telephone number)  
(Fax Number)

GRANT PERIOD:

From \_\_\_\_\_ to \_\_\_\_\_

TOTAL AUTHORIZED BUDGET: \$

Federal Contribution: \$  
State Contribution: \$  
Local Contribution: \$  
Other Contributions: \$

ACCOUNTING DETAIL:

Index/PCA No.:  
Fed I.D. No.:  
CFDA #: (delete if not applicable)

## GRANT

This is Grant # \_\_\_\_\_ between the Department of Licensing and Regulatory Affairs (Grantor), and [Insert name of grantee] (Grantee), subject to terms and conditions of this grant agreement (Agreement). For purposes of accounting and fulfillment of recipient audit responsibilities associated with this grant award, the CFDA No. is [insert number] and Federal Grant Award No. is [Insert Award No.]. All terms of this Grant Agreement are nonnegotiable.

### 1.0 Statement of Purpose

[This Section is typically one paragraph in length and provides an overview of the project being funded. LARA to identify in a short paragraph, the overall project description, or type of Deliverables/Services requested.] The State Energy Office is responsible for implementation of the state energy conservation plan which includes grants to public and private entities for energy efficiency and renewable energy activities.

This grant award enables [Insert Statement of Purpose].

### 1.1 Statement of Work

The Grantee agrees to undertake, perform, and complete the following project:

[Insert brief description of the project or Deliverables/Services requested]

- (a) [Primary Deliverables/Services]
- (b) Submit timely monthly process and financial status reports.
- (c) Submit a comprehensive final report and final payment request.
- (d) [Insert additional work items as applicable]

These services are more specifically described in the Grantee's Proposal, Attachment A.

### 1.2 Detailed Budget

- (a) This Agreement does not commit the State of Michigan (State) or the Department of Licensing and Regulatory Affairs (LARA) to approve requests for additional funds at any time.
- (b) If applicable, travel expenses will not be reimbursed at rates greater than the State Travel Rates, Attachment C, without the prior written consent of the Grant Administrator.
- (c) Attachment B is the Budget. The Grantee agrees that all funds shown in the Budget are to be spent as detailed in the Budget.

[Please select one of the following options:]

**Changes in the Budget of less than 5% of the total line item amount do not require prior written approval, but Grantee must provide notice to the Grant Administrator.**

**Changes in the Budget equal to or greater than 5% of the total line item amount will be allowed only upon prior review and written approval by the Grant Administrator. A formal grant amendment must be signed by both the Grantor and Grantee.**

### **1.3 Payment Schedule**

The maximum amount of grant assistance offered is \$ \_\_\_\_\_. **OPTIONAL: (Delete if not applicable) An initial advance of \$ \_\_\_\_\_ shall be made to the Grantee upon receipt by the Grant Administrator of a signed Agreement and a request for advance from the Grantee.** Progress payments up to a total of 85% of the Total Authorized Budget may be made upon submission of a Grantee request indicating grant funds received to date, project expenditures to date (supported with computer printouts of accounts, general ledger sheets, balance sheets, etc.), and objectives completed to date. Backup documentation such as computer printouts of accounts, ledger sheets, check copies, etc. shall be maintained for audit purposes in order to comply with this Agreement. The payment of the final 15% of the grant amount shall be made after completion of the project and after the Grant Administrator has received and approved a final report, if applicable. The final payment is also contingent upon the submission of a final invoice that includes expenditures of grant funds reported by line item and compared to the approved Budget. The payment request or financial status report form (C-108) will be provided to the Grantee by the Grant Manager.

Public Act 279 of 1984 states that the state shall take all steps necessary to assure that payment for goods or services, is mailed within 45 days after receipt of the goods or services, a complete invoice for goods or services, or a complete contract for goods or services, whichever is later.

### **1.4 Monitoring and Reporting Program Performance**

A. **Monitoring.** The Grantee shall monitor performance to assure that time schedules are being met and projected work by time period is being accomplished.

B. **Monthly Reports.** The Grantee shall submit to the Grant Administrator **monthly** performance reports that briefly present the following information:

1. Percent of completion of the project objectives. This should include a brief outline of the work accomplished during the reporting period and the work to be completed during the subsequent reporting period.
2. Brief description of problems or delays, real or anticipated, which should be brought to the attention of the Grant Administrator.

3. Statement concerning any significant deviation from previously agreed-upon Statement of Work.

C. Monthly reports are due no later than [insert dates].

D. A Final Report is required. The Grantee will do the following: **(Delete Part C if a final report is not required.)**

1. Submit \_\_\_\_\_ draft copies of the final report no later than \_\_\_\_\_ for review by the Grant Administrator.

2. After the Grant Administrator has determined the completeness and factual accuracy of the report, the Grantee shall submit \_\_\_\_\_ final copies of the report to the Grant Administrator.

3. The final report will include the following information:

a. A summary of the project implementation plan and any deviations from the original project as proposed.

b. Accomplishments and problems experienced while carrying out the project activities.

c. Coordinated efforts with other organizations to complete the project.

d. Impacts, anticipated and unanticipated, experienced as a result of the project implementation.

e. Financial expenditures of grant money and other contributions to the project, in-kind and/or direct funding.

f. Any experience in applying the project products and anticipated “next steps”.

g. Actual Budget expenditures compared to the Budget in this Agreement. Include the basis or reason for any discrepancies.

## PART II - GENERAL PROVISIONS

### 2.1 Project Changes

Grantee must obtain prior written approval for project changes from the Grant Administrator. **See Section 1.2, Detailed Budget.**

### 2.2 Delegation

Grantee may not delegate any of its obligations under the Grant without the prior written approval of the State. Grantee must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Grantee must: (a) be the sole point of contact regarding all project matters, including payment and charges for all Grant Activities; (b) make all payments to the subgrantee; and (c) incorporate the terms and conditions contained in this Grant in any subgrant with a subgrantee. Grantee remains responsible for the completion of the Grant Activities, compliance with the terms of this Grant, and the acts and omissions of the subgrantee. The State, in its sole discretion, may require the replacement of any subgrantee.

### 2.3 Project Income

To the extent that it can be determined that interest was earned on advances of funds, such interest shall be remitted to the Grantor. All other program income shall either be added to the project budget and used to further eligible program objectives or deducted from the total program budget for the purpose of determining the amount of reimbursable costs. The final determination shall be made by the Grant Administrator.

### 2.4 Share-in-savings

The Grantor expects to share in any cost savings realized by the Grantee. Therefore, final Grantee reimbursement will be based on actual expenditures. Exceptions to this requirement must be approved in writing by the Grant Administrator.

### 2.5 Order of Spending

Unless otherwise required, Grantee shall expend funds in the following order: (1) private or local funds, (2) federal funds, and (3) state funds. Grantee is responsible for securing any required matching funds from sources other than the State.

### 2.6 Purchase of Equipment

The purchase of equipment not specifically listed in the Budget, Attachment B, must have prior written approval of the Grant Administrator. Equipment is defined as non-expendable personal property having a useful life of more than one year and a true value of \$5,000 or more. Such equipment shall be retained by the Grantee unless otherwise specified at the time of

approval. All equipment purchased with grant funds shall be subject to the rules set forth in 10 CFR 600.130-137, 10 CFR 600.231-233, or 10 CFR 600.320-324 as applicable.

## **2.7 Accounting**

The Grantee shall adhere to the Generally Accepted Accounting Principles and shall maintain records which will allow, at a minimum, for the comparison of actual outlays with budgeted amounts. The Grantee's overall financial management system must ensure effective control over and accountability for all funds received. Accounting records must be supported by source documentation including, but not limited to, balance sheets, general ledgers, time sheets and invoices. The expenditure of state funds shall be reported by line item and compared to the Budget.

## **2.8 Records Maintenance, Inspection, Examination, and Audit.**

The State or its designee may audit Grantee to verify compliance with this Grant. Grantee must retain, and provide to the State or its designee upon request, all financial and accounting records related to the Grant through the term of the Grant and for 7 years after the latter of termination, expiration, or final payment under this Grant or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Grantee must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Grantee's premises or any other places where Grant Activities are being performed, and examine, copy, and audit all records related to this Grant. Grantee must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Grant must be paid or refunded within 45 calendar days.

This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant Activities in connection with this Grant.

If the Grantee is a governmental or non-profit organization and expends the minimum level specified in OMB Uniform Guidance (\$750,000 as of December 26, 2013) or more in total federal funds in its fiscal year, then Grantee is required to submit an Audit Report to the Federal Audit Clearinghouse (FAC) as required in 200.36.

## **2.9 Competitive Bidding**

The Grantee agrees that all procurement transactions involving the use of state funds shall be conducted in a manner that provides maximum open and free competition. When competitive selection is not feasible or practical, the Grantee agrees to obtain the written approval of the Grant Administrator before making a sole source selection. Sole source contracts should be negotiated to the extent that such negotiation is possible.

### 3.0 Liability

The State is not liable for any costs incurred by the Grantee before the start date or after the end date of this Agreement. Liability of the State is limited to the terms and conditions of this Agreement and the grant amount.

**3.1 Intellectual Property** [You must select ONE of four options for ownership. The other three options must be deleted. If you have any questions, please discuss this with a grant administrator. Any changes to this section need to be reviewed by the Attorney General's office.]

**Option 1:** The first option should continue to be ownership by the Grantee:

Ownership by Grantee

[Use this option if the State does NOT intend to own the Deliverables at the end of the Grant]

Unless otherwise required by law, all intellectual property developed using funds from this Agreement, including copyright, patent, trademark and trade secret, shall belong to the Grantee.

**OR**

**Option 2:** The second option provides for total ownership by the State:

Ownership by Grantor

[Use this option if the State intends to own the Deliverables at the end of the Grant. Consider using a contract instead of a Grant Agreement as it provides better enforceability for the State.]

All Deliverables shall be owned by the Grantor and shall be considered works made for hire by the Grantee for the Grantor. The Grantor shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

With the sole exception of any preexisting licensed works, the Grantee shall assign, and upon creation of each Deliverable automatically assigns, to the Grantor, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Grantee, insofar as any such Deliverable, by operation of law, may not be considered work made for hire by the Grantee for the Grantor. From time to time upon Grantor's request, the Grantee and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The Grantor shall have the right to obtain and hold in its own name all

copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**OR**

**OPTION 3:** The third option provides for ownership by the State, but grants a license back to the Grantee. In order for this option to be used, the Grant Agreement **MUST** be approved by the State Administrative Board and the State **MUST** receive fair market value for the license back. **Derivative Work** is intellectual property that is created based on the underlying intellectual property. A definition is included in this option.

Ownership by GrantorGrantee, License to Grantee

[Use this if the Grantor is granting a license back to the Grantee for the Software-  
**THE STATE MUST RECEIVE FAIR MARKET VALUE FOR THE LICENSE  
AND THE GRANT AGREEMENT MUST BE APPROVED BY THE STATE  
ADMINISTRATIVE BOARD]**

All Deliverables shall be owned by the Grantor and shall be considered works made for hire by the Grantee for the Grantor. The Grantor shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

With the sole exception of any preexisting licensed works, the Grantee shall assign, and upon creation of each Deliverable automatically assigns, to the Grantor, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Grantee, insofar as any such Deliverable, by operation of law, may not be considered work made for hire by the Grantee for the Grantor. From time to time upon Grantor's request, the Grantee and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the Grantor may request. The Grantor shall have the right to obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

"Derivative Work" means a work that is based on one or more preexisting works, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting works may be recast, transformed, or adapted, and that if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement. For purposes of this Agreement, a Derivative Work includes any compilation that incorporates such preexisting work.

**(Option 1 – Deliverables only)** License to the Grantee. The Grantor grants to the Grantee, the royalty-free, world-wide, non-exclusive right and license under any Deliverable now or in the future owned by the Grantor pursuant to this



Agreement, or with respect to which the Grantor has a right to grant such rights or licenses, to the extent required by the Grantee to market the Deliverables and exercise its full rights in the Deliverables, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables.

**(Option II – Deliverables and Derivative Works)** License to the Grantee. The Grantor grants to the Grantee, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the Grantor pursuant to this Agreement, or with respect to which the Grantor has a right to grant such rights or licenses, to the extent required by the Grantee to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.

**(May be used in conjunction with Option I or Option II)** License Back to the Grantor. Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative Work of a preexisting work, the Grantee shall cause the Grantor to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.

**OR**

**OPTION 4:** This fourth option gives the State an interest in the Intellectual Property, but not ownership. This is often a good solution where the State wants to retain an interest in the intellectual property, but may be able to save significant funds by not requiring ownership. Allowing the Grantee to retain ownership often provides the Grantee with an incentive to market and use the developed intellectual property which reduces the need for up-front dollars. The greatest concern with a license instead of outright ownership is the impact if the owner files for bankruptcy. A bankruptcy court may terminate the State's license regardless of what the grant agreement says. However, bankruptcy courts do not often disregard contractual terms and the risk in most instances is very minimal.

License to Grantor

**[Use this option if the State does not intend to own the Deliverable when the Grant is completed, but does intend to retain the ability to use the Deliverable and created additional works based on the Deliverable.]**

Grantee grants to the Grantor a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Deliverables and related documentation according to the terms and conditions of this Agreement. For the purposes of this

license, “site-wide” includes any State of Michigan office regardless of its physical location.

The Grantor may modify the Deliverable and may combine the Deliverable with other programs or materials to form a derivative work. The Grantor will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Deliverable other than those granted in this Agreement.

The Grantor may copy each Deliverable to multiple hard drives or networks unless otherwise agreed by the parties.

The Grantor will make and maintain no more than one archival copy of each Deliverable, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The Grantor may also make copies of the Deliverable in the course of routine backups for the purpose of recovery of contents.

In the event that the Grantee shall, for any reason, cease to conduct business, or cease to support the Deliverable, the Grantor shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

### **3.2 Safety**

The Grantee, and all subgrantees are responsible for insuring that all precautions are exercised at all times for the protection of persons and property. Safety provisions of all Applicable Laws and building and construction codes shall be observed. The Grantee, and every subgrantee are responsible for compliance with all federal, state and local laws and regulations in any manner affecting the work or performance of this Agreement and shall at all times carefully observe and comply with all rules, ordinances, and regulations. The Grantee, and all subgrantees shall secure all necessary certificates and permits from municipal or other public authorities as may be required in connection with the performance of this Agreement.

### **3.3. General Indemnification.**

Grantee must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Grantee (or any of Grantee’s employees, agents, subgrantees, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Grant; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Grantee (or any of Grantee’s employees, agents,

subgrantees, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Grantee (or any of Grantee's employees, agents, subgrantees, or by anyone else for whose acts any of them may be liable).

The State will notify Grantee in writing if indemnification is sought; however, failure to do so will not relieve Grantee, except to the extent that Grantee is materially prejudiced. Grantee must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Grantee will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

## **OPTION 2**

Inasmuch as each party to this grant is a governmental entity of the State of Michigan, each party to this grant must seek its own legal representation and bear its own costs; including judgments, in any litigation which may arise from the performance of this grant. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

### **3.4 Termination**

#### **A. Termination for Cause**

The State may terminate this Grant for cause, in whole or in part, if Grantee, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Grant will not be construed to mean that other breaches are not material.

If the State terminates this Grant under this Section, the State will issue a termination notice specifying whether Grantee must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Grantee was not in breach of the Grant, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Subsection B, Termination for Convenience.

The State will only pay for amounts due to Grantee for Grant Activities accepted by the State on or before the date of termination, subject to the State's right to set off any

amounts owed by the Grantee for the State's reasonable costs in terminating this Grant. The Grantee must pay all reasonable costs incurred by the State in terminating this Grant for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Grant Activities from other sources.

## **B. Termination for Convenience**

The State may immediately terminate this Grant in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Grantee must: (a) cease performance of the Grant Activities immediately, or (b) continue to perform the Grant Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Grant for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

### **3.5 Repayment Events**

The Grantee shall repay the total amount of any funds disbursed to the Grantee (the "Repayment Amount") upon the occurrence of any one or more of the following at any time through the end of the Grant Period (each a "Repayment Event"):

(a) Prohibited by the Act

If any funds disbursed are used by the Grantee toward:

1. Activities prohibited in 10 CFR 420, Section 420.18 "Expenditures prohibitions and limitations."

(b) Materially Incorrect Information

If any information, representation or warranty, provided by the Grantee to the State in support of this Agreement, any request by the Grantee for the disbursement of Grant funds, Milestone Report, or to satisfy any conditions precedent to the Grantee receiving any disbursed funds, is found to be incorrect by the State in any material respect.

### **3.6 Repayment of Funds Disbursed**

The Grantee shall notify the Grant Manager of any Repayment Event (the "Grantee Notice"). The Grantee shall have sixty (60) calendar days from the date of the Grantee Notice to cure the Repayment Event to the satisfaction of the Director of the Michigan Agency for Energy (MAE), or such longer period as may be agreed to in writing by the MSF Fund Manager, and upon failure of the Grantee to cure within the time required, the Grantee shall immediately remit the Repayment Amount to the State. If the Grant Manager has not received any Grantee Notice as required by the preceding sentence, upon the failure of the Grantee to cure a Repayment Event to the satisfaction of the Director of MAE within thirty (30) calendar days after written notice by the Director of MAE, or within such longer period of time as determined in writing and at the sole

discretion of the Director of MAE, the Repayment Amount is due the MAE, and the Grantee shall immediately remit the Repayment Amount.

In addition to paying any required Repayment Amount as set forth in Section 2.15, any required Penalty as set forth in Section 3.7, and any required costs and expenses as set forth in this Agreement, the Grantee shall pay interest on the Repayment Amount at the rate of [Insert percentage from zero to seven] percent (0%) per annum. Interest shall accrue on the Repayment Amount beginning on the date such Repayment Amount is due and continue until the Repayment Amount, all costs and expenses to collect the Repayment Amount, and all interest are paid in full to the State. All payments by the Grantee under this Section 3.6 shall first be applied to reimburse the costs and expenses to collect the Repayment Amount, then to satisfy interest thereon, then to satisfy the Repayment Amount. In no event shall the Repayment Amount required to be paid by the Grantee exceed the aggregate amount of funds disbursed under this Grant and received by the Grantee [A1] up to the date of such Repayment Event; provided that, for the avoidance of doubt, any amount required to be paid by the Grantee as a penalty or as interest shall be paid in addition to the Repayment Amount. Payment of the Repayment Amount, costs and fees, and interest thereon shall not be applied against any monies that may be due and owing as a result of a Penalty or as otherwise may be required by this Agreement.

This Section 3.6 shall survive the end of the Grant Period for a period of three (3) years.

### **3.7 Penalty**

For each instance through the Grant Period in which the Grantee fails to submit a Progress Report when due, which Progress Report is not provided by the Grantee to the satisfaction of the Director of MAE within ten (10) business days after written notice thereof by the Director of MAE, or within such longer period of time as determined in writing and at the sole discretion of the Director of MAE, a penalty is due to the MAE from the Grantee in the principal amount of [Insert number from Zero dollars to One Hundred Dollars max] (\$) <Insert Penalty Amount if Different> (the "Penalty"), and the Grantee shall immediately remit payment of the Penalty to the MAE.

In addition to paying any required Penalty, any required Repayment Amount as set forth in Section 3.6, and any required costs and expenses as set forth in Section 2.18, or as otherwise provided in this Agreement, the Grantee shall pay interest on the Penalty at the rate of <Insert Penalty of Zero (0%) to seven percent (7%)> per annum. Interest shall accrue on the Penalty beginning on the date such Penalty is due and continue until the Penalty, all costs and expenses to collect the Penalty, and all interest are paid in full to the MAE. All payments by the Grantee under this Section 3.7 shall first be applied to reimburse the costs and expenses to collect the Penalty, then to satisfy interest thereon, then to satisfy the Penalty. Payment of any Penalty, costs and fees, and interest thereon:

- (a) shall not be applied against any monies that may be due and owing as a result of a Repayment Event or as otherwise may be required by this Agreement and

(b) is required by this Agreement regardless of whether any funds have been disbursed to the Grantee.

This Section 3.7 shall survive the end of the Grant Period for a period of three (3) years.

### **3.8 Available Remedies**

Upon the occurrence of any one or more of an event of default, the Recipient has thirty (30) calendar days from the date of default to cure the event. On the thirty-first (31) calendar day, the MAE may terminate this Agreement, and upon termination of this Agreement, the MAE shall have no further obligation to make any disbursement of funds under this Agreement or payment of any kind to the Grantee. The termination of this Agreement is not intended to be the sole and exclusive remedy in case any Event of Default shall occur, and each remedy shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law, in equity, by statute or otherwise. The Grantee shall also pay all reasonable costs and expenses, including, without limitation, attorneys' fees and expenses incurred by the MAE in collecting any sums due the MAE under this Agreement, in enforcing any of its rights under this Agreement due to failure of the Grantee to comply with its obligations under this Agreement, or in exercising any remedies available to the MAE as result of the occurrence of one or more Events of Default.

This Section 2.18 shall survive the end of the Grant Period for a period of three (3) years.

### **3.9 Conflicts and Ethics**

Grantee will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Grant; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Grant; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Grantee, any consideration contingent upon the award of the Grant. Grantee must immediately notify the State of any violation or potential violation of these standards. This Section applies to Grantee, any parent, affiliate, or subsidiary organization of Grantee, and any subgrantee that performs Grant Activities in connection with this Grant.

### **4.0 Non-Discrimination**

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Grantee and its subgrantees agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Grant.

#### **4.1 Unfair Labor Practices**

Under MCL 423.324, the State may void any Grant with a Grantee or subgrantee who appears on the Unfair Labor Practice register compiled under MCL 423.322.

#### **4.2 Force Majeure**

Neither party will be in breach of this Grant because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Grantee will not be relieved of a breach or delay caused by its subgrantees. If immediate performance is necessary to ensure public health and safety, the State may immediately Grant with a third party.

#### **4.3 Media Releases.**

News releases (including promotional literature and commercial advertisements) pertaining to the Grant or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

#### **4.4 Website Incorporation**

The State is not bound by any content on Grantee's website unless expressly incorporated directly into this Grant.

#### **4.5 Certification Regarding Debarment**

The Grantee certifies, by signature to this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal or State department or agency. If the Grantee is unable to certify to any portion of this statement, the Grantee shall attach an explanation to this Agreement.

#### **4.6 Illegal Influence**

(a) The Grantee certifies, to the best of his or her knowledge and belief that:

(1) No federal appropriated funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of

Congress in connection with this grant, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Grantee shall require that the language of this certification be included in the award documents for all grants or subcontracts and that all subrecipients shall certify and disclose accordingly.

The State has relied upon this certification as a material representation. Submission of this certification is a prerequisite for entering into this Agreement imposed by 31 USC § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(b) The Grantee certifies, to the best of his or her knowledge and belief that no state funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any State agency, a member of the Legislature, or an employee of a member of the Legislature in connection with the awarding of any state contract, the making of any state grant, the making of any state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state contract, grant, loan or cooperative agreement.

#### **4.7 Governing Law**

This Grant is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Grant are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Grant must be resolved in Michigan Court of Claims. Grantee consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Grantee must appoint agents in Michigan to receive service of process.

#### **4.8 Compliance with Laws**

Grantee must comply with all federal, state and local laws, rules and regulations.

#### **4.9 Disclosure of Litigation, or Other Proceeding.**

Grantee must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Grantee, a subgrantee, or an officer or director of Grantee or subgrantee, that arises during the term of the Grant, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Grantee's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Grantee is required to possess in order to perform under this Grant.



## **5.0 Assignment**

Grantee may not assign this Grant to any other party without the prior approval of the State. Upon notice to Grantee, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Grant to any other party. If the State determines that a novation of the Grant to a third party is necessary, Grantee will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Grant.

## **5.1 Entire Grant and Modification**

This Grant is the entire agreement and replaces all previous agreements between the parties for the Grant Activities. This Grant may not be amended except by signed agreement between the parties.

## **5.2 Grantee Relationship**

Grantee assumes all rights, obligations and liabilities set forth in this Grant. Grantee, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Grant. Grantee, and not the State, is responsible for the payment of wages, benefits and taxes of Grantee's employees and any subgrantees. Prior performance does not modify Grantee's status as an independent Grantee.

## **5.3 Dispute Resolution**

The parties will endeavor to resolve any Grant dispute in accordance with this provision. The dispute will be referred to the parties' respective Grant Administrators. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Grant.

## **5.4 Severability**

If any part of this Grant is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Grant and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Grant will continue in full force and effect.

## **5.5 Waiver**

Failure to enforce any provision of this Grant will not constitute a waiver.

SAMPLE

## **Addendum to Part II – General Provisions**

### **HISTORIC PRESERVATION**

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

### **DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**Definitions:** For purposes of this article, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

- (1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.
- (2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."
- (3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
- (4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
- (5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

**(a) Davis Bacon Act**

**(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records

shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Michigan Strategic Fund, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.



(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**(b) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Sub-recipient, and Recipient's and Sub-recipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5.2 Signatories

The signatories warrant that they are empowered to enter into this Agreement and agree to be bound by it.

\_\_\_\_\_  
Mike Zimmer  
Director  
Department of Licensing and Regulatory Affairs  
State of Michigan

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name of Person Authorized to Accept Grant)  
(Title)  
(Name of Organization)

\_\_\_\_\_  
Date

GRANT NO.           

Revised 08/17/2015